

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

IN RE:

CIRCUIT CITY STORES, INC.,  
*et al.*

Debtors

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Case No. 08-35653

Chapter 11

**COMMONWEALTH OF VIRGINIA DEPARTMENT OF TAXATION'S LIMITED  
OBJECTION TO DEBTOR'S MOTION FOR ORDER PURSUANT TO BANKRUPTCY  
CODE SECTIONS 105 and 363 (I) AUTHORIZING DEBTORS TO ENTER INTO AN  
AGREEMENT IN CONNECTION WITH SALE OF FURNITURE, FIXTURES AND  
EQUIPMENT, SUBJECT TO HIGHER OR OTHERWISE BETTER PROPOSALS; (III)  
APPROVING SALES OF FURNITURE, FIXTURES AND EQUIPMENT FREE AND  
CLEAR OF ALL INTERESTS**

COMES NOW the Commonwealth of Virginia, Department of Taxation, ("the Department") by Counsel, and in support of its objection states as follows:

1. The Department is a taxing authority for the Commonwealth of Virginia and administers and collects Retail Sales and Use Tax. As such, the Department is a creditor in this case with a substantial claim for unpaid taxes, penalties and interest.
2. As of the date of filing for relief the debtors were registered to file monthly sales and use tax returns with the Department. This registration status requires the debtors to report and collect sales tax on all sales of tangible personal property unless such sales are otherwise exempt. *Code of Virginia* § 58.1-609.10(2) provides an exemption for "occasional sales." But this exemption is not extended to reorganization or liquidation sales where the nature, character and scope of the sales process constitutes an activity which in itself requires the holding of a certificate of registration.

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3. The debtors have proposed in their motion to retain the services of a liquidation agent to facilitate the sale of their furniture fixtures and equipment ("FF&E") situated in a number of locations including the corporate headquarters located in Henrico County, Virginia. Given the debtors' status as a large multi-state corporation, it is a certainty that there is a substantial amount of FF&E within the Henrico County location which will have considerable value even in the distressed circumstances of a liquidation sale.
4. The liquidation agents letter attached and made a part of the debtors' motion describes a "comprehensive marketing effort" including, multi-media advertising, phone solicitations, onsite liquidation executions, and support activities over a period of six weeks resulting in sales to a large and diverse number of individuals and organizations. The Department has consistently ruled that the sales of business assets where the activity is sufficient in number of sales, scope and character to require a sales tax registration are not exempt from the retail sales and use tax. Thus, the sales conducted by the debtors' liquidation agent must be reported and sales tax collected where appropriate under the debtors' existing sales tax registrations.
5. While the Department has no objection to the orderly liquidation of the debtors' FF&F and the resulting benefit to the bankruptcy estate. It appears likely that this sales process will take place after most if not all of the debtors' personnel have been dismissed. Therefore, any order authorizing these sales should specifically require tax returns to be filed and identify the parties responsible for the filing process and require that sales taxes collected be paid.

